Advanced Installations, Inc. *and* **Ventura County District Council of Carpenters.** Cases 31-CA-8965, 31-CA-8972, 31-CA-9340, and 31-CA-9536

August 20, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On October 16, 1980, Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Advanced Installations, Inc., Ventura, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 2(a) and reletter the subsequent paragraphs accordingly.

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate you regarding your union activities and sympathies.

WE WILL NOT threaten you with reprisals because you do not agree to unlawful changes in the terms of our collective-bargaining agreement with Ventura County District Council of Carpenters and because you participate in efforts to oppose those changes.

WE WILL NOT suspend, discharge, or otherwise discriminate against you for engaging in activities on behalf of the above-named labor organization or any other labor organization as your collective-bargaining representative.

WE WILL NOT change and refuse to apply terms and conditions of collective-bargaining agreements with Ventura County District Council of Carpenters as the collective-bargaining representative of employees in the following appropriate bargaining unit:

All employees employed by employer-members of The Building Industry Association of California, Inc., including Advanced Installations, Inc., in the classifications carpenter, shingler, hardwood floor worker, millwright, saw filer, table power saw operator, pneumatic nailer or power stapler, wood fence builder on residential projects, roof loader of shingles, pile driver foreman, bridge or dock carpenter and cable splicer, pile driver man-derrick bargeman, head rockslinger, rockslinger, rock bargeman or scowman, cabinet installer and acoustical installer, excluding office clerical employees,

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge concluded, and we agree, that Respondent violated Sec. 8(a)(5) and (1) of the Act by bargaining directly with employees Beck and Mills concerning the method of computing working hours and payment therefor. In so doing, we additionally note that the record establishes that Respondent, in fact, offered Mills, and Mills accepted, the opporuntity to work under an incentive program.

[3] In par. 2(a) of his recommended Order, the Administrative Law Judge provided a general bargaining order as a remedy for his finding that Respondent violated Sec. 8(a)(5) and (1) of the Act by altering the terms and conditions of its collective-bargaining agreement with the Union. However, since the complaint did not allege and the Administrative Law Judge did not find that Respondent generally refused to bargain with the Union, we shall modify the recommended Order. See *Lloyd Well, an Individual d/b/a Pere Marquette Park Lodge*, 237 NLRB 855, fn. 2 (1978).

Member Jenkins would provide interest on the backpay awards due to Respondent's unlawful suspension and discharges of employees in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

guards and supervisors as defined by the Act.

WE WILL NOT offer to bargain or bargain directly with employees in the above-described bargaining unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights set forth above which are guaranteed by the National Labor Relations Act.

WE WILL reinstate and observe all terms and conditions of our collective-bargaining agreement with Ventura County District Council of Carpenters, covering employees in the appropriate bargaining unit described above, that we have changed, and WE WILL make you whole for any losses in wages and benefits that you would have received but for our unlawful changes and modifications in contractual terms.

WE WILL offer Eric James Beck, Donald H. Webb, David Mills, and Patrick Allison Mergen immediate and full reinstatement to their former positions, dismissing, if necessary, anyone who may have been hired or assigned to perform the work that they had been performing prior to the time that they were terminated, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of discrimination, with interest.

ADVANCED INSTALLATIONS, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in Ventura, California, on February 12, 13, 14, and 27, 1980, and the record, after being reopened, was closed on August 1, 1980. On June 26, 1979,[1] the Regional Director for Region 31 of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing, based upon the unfair labor practice charges in Case 31-CA-8965, filed on May 1 and amended on May 21, and in Case 31-CA-8972, filed on May 4 and amended on May 21, alleging violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.*, herein called the Act. Based upon the charge in Case 31-CA-9340, filed on August 30 and amended on October 31, the said Regional Director issued an order consolidating cases, consolidated amended complaint and notice of hearing on October 31, alleging additional violations of these subsections of the Act. Finally, the charge in Case 31-CA-9536, filed on November 6, led the Regional Director to issue an order consolidating cases, second consolidated amended complaint and notice of hearing, alleging additional violations encompassed by the foregoing subsections of the Act. All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record,[2] upon the briefs which were filed, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material, Advanced Installations, Inc., herein called Respondent, has been engaged in the business of installing insulation and weather-stripping, and has been an employer-member, for the purpose of collective bargaining with labor organizations, of The Building Industry Association of California, Inc., herein called the Association. The Association is a voluntary association of employers, and maintains its headquarters in Southern California. It admits to membership contractors engaged in construction in Southern California and it exists, in part, for the purpose of bargaining with labor organizations concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of employees employed by its employer-members, including Respondent. Respondent admits that the employer-members of the Association constitute a single employer for the purpose of the Act. Further, the parties stipulated that during the last fiscal or calendar year, the employer-members of the Association collectively purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of California. They also stipulated that at all times material, the Association and its employer-members, including Respondent, collectively have been an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, Ventura County District Council of Carpenters, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

[1] Unless otherwise stated, all dates occurred in 1979.

[2] Counsel for the Charging Party has moved to strike certain summaries proferred by Respondent, as exhibits, on the ground that the underlying documentation has not been made available to her for inspection and comparison. Counsel for Respondent opposes this motion, arguing that counsel for the Charging Party simply has chosen not to avail herself of opportunities for inspection that were afforded. Counsel for the Charging Party has not disputed that representation, nor has she specified any instance when the opportunity for inspection has been denied to her. Moreover, as discussed *infra*, counsel for the General Counsel has represented, in a proffered post-hearing stipulation, that she has been shown the underlying documentation. There is no basis for inferring that this documentation would have been made available to the General Counsel, but not to the Charging Party. Therefore, I deny the Charging Party's motion to strike.

III. THE ISSUES

Since 1964, Respondent has been a member of the Association, which existed under a different name prior to July 27, 1967.[3] Respondent has authorized the Association to bargain on its behalf and has agreed to be bound by collective-bargaining agreements negotiated with the Union by the Association. On July 1, 1977, the Union and the Association, on behalf of its employer-members, entered into a collective-bargaining agreement, effective until July 15, 1980.[4]

The General Counsel alleges that between November 3, 1978, and February 26, and, again, on and after April 26, Respondent made unilateral changes in those portions of the collective-bargaining agreement pertaining to wage rates; time spent loading, unloading, and handling material; travel time; and, contributions to the Joint Apprenticeship and Training Committee Fund, Health and Welfare Fund, Pension Plan Fund, and Vacation Savings and Holiday Plan. In addition, it is alleged that, during the week of March 5, Respondent bypassed the Union and engaged in direct negotiations with an employee regarding calculation and payment of the latter's wages and other benefits. These matters are alleged to constitute violations of Section 8(a)(5) and (1) of the Act.

The General Counsel also alleges that the following personnel actions were taken in violation of Section 8(a)(3) and (1) of the Act: 1-day suspensions of Frank Pagano in March and of Eric Beck on April 6, the discharge of Beck on April 26, the layoff of Donald Webb in early August, and the layoffs of David Mills and of Patrick Mergen on August 27 or 28. Finally, the General Counsel alleges that various remarks of Vice President and Manager Robert Wood[5] and of then Operations Manager Dave Thompson[6] during 1979 violated Section 8(a)(1) of the Act. Thus, it is alleged that Wood had solicited an employee to engage in surveillance of other employees' protected activities on March 9 or 15; had threatened employees with unilateral changes in their terms or conditions of employment on April 25 and 26 and in early May; had threatened employees by telling them on April 26 to quit if they did not want to acquiesce in Respondent's unilateral changes; and, had unlawfully interrogated employees regarding their union activities, sympathies, and desires in mid-February, in mid-March, on April 6, in mid-July, during the week of August 17, and on August 24. Similarly, it is alleged that during May, Thompson had threatened to lay off employees who did not comply with the unilateral changes and that during July, he had unlawfully interrogated employees regarding their union activities.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Unilateral Changes*

The principal allegation in this matter, and the one from which it is alleged all other unlawful conduct evolved, is that Respondent modified the method of payment prescribed in its collective-bargaining agreement with the Union. In essence, that agreement provides that employees are to be paid on an hourly basis. In addition to the actual time spent performing their craft duties, under Appendix C of the agreement employees must be paid for "loading, unloading and handling of materials" and for "travel from job to job, shop to job, or job to shop." Finally, Attachment 1 to Appendix A of the agreement provides that for each hour worked by an employee, certain specified amounts are to be paid to the various funds enumerated in section III, *supra*. Accordingly, if the number of hours worked by an employee is understated, reduced amounts will be contributed to these funds.

Seven employees or former employees of Respondent (journeymen Eric James Beck, Patrick Donlon, and Frank Pagano, and apprentices David Mills, Marty Folk, Donald H. Webb, and Patrick Allison Mergen) testified that at various points in their employment with Respondent, specifically during late 1978 and during 1979, they had been told that a certain square footage of insulation, the figure varying at different points in time and for different employees, had to be installed or "hung" to receive an hour's pay. According to these employees, this resulted in their not being paid for certain hours that they had worked inasmuch as it frequently took longer than an hour to install the amount of insulation required to claim an hour's pay. Moreover, the employees testified that during these periods of time Respondent did not pay them for the time which they had spent in travel and in loading, unloading, and handling material. Of course, as noted above, since contributions to the various contractual funds are based upon the number of hours worked, the reduction in total working hours occasioned by this piecework or, as Wood referred to it, "incentive" method, would also result in a reduction in contributions to the funds.

Wood, Respondent's supervisor in immediate charge of operations at Ventura, denied that there had ever been any deviation from the contractually prescribed, hourly method of payment. To support his testimony, and to refute that of the employees, Respondent produced summaries (Resp. Exhs. 2A through F), ostensibly showing the total daily hours worked by Beck, Donlon, Pagano,

[3] No issue has been raised with respect to the effect of the change in name of the Association either on Respondent's membership therein or on its duty to bargain with the Union.

[4] This agreement covered all employees employed by employer-members of the Association in the job classifications listed in article IX: carpenter, shingler, hardwood floor worker, millwright, saw filer, table power saw operator, pneumatic nailer or power stapler, wood fence builder on residential projects, roof loader of shingles, pile driver foreman, bridge or dock carpenter and cable splicer, pile driver man-derrick bargeman, head rockslinger, rockslinger, rock bargeman or scowman, cabinet installer and acoustical installer. The parties stipulated that a unit consisting of these classifications is appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. They further stipulated that at all times material, a majority of the employees in that unit had designated and selected the Union as their representative for the purposes of collective bargaining and, further, that at all times material since at least April 24, 1964, the Union has been the exclusive representative of the employees in that unit for the purposes of collective bargaining.

[5] While the complaint alleges only that Wood was Respondent's vice president, he testified that he was also its manager. The parties stipulated that, at all times material, Wood had been a supervisor within the meaning of Sec. 2(11) of the Act and an agent of Respondent.

[6] The parties stipulated that Thompson had occupied the position of operations manager and had been a supervisor and agent of Respondent from approximately December 15, 1978, to approximately December 15, 1979.

Mills, Webb, and Mergen, as well as the total footage installed on those days. At the time that these summaries were produced initially, Respondent did not possess the daily workcards (similar to a standard timecard) from which the figures on the summaries had assertedly been copied. A 2-week recess was taken to permit counsel for the General Counsel and counsel for the Charging Party to examine the workcards, as required by Federal Rules of Evidence, Rule 1006, in order to permit summaries to be admitted into evidence.

When the hearing resumed,[7] counsel for the General Counsel represented that she had not been shown workcards for a substantial number of entries on the summaries and, moreover, that there were numerous inaccuracies on the summaries when compared with cards that she had been shown. Respondent introduced the workcards then in its possession, which apparently represented all of the cards that had been produced for the General Counsel's inspection during the 2-week period with respect to the employees covered by the summaries. Even a cursory comparison of the entries on the summaries and of the workcards discloses that a significant number of cards had not been produced for inspection. The hearing was closed with the parties being instructed that only those entries on the summaries that were supported by a corresponding workcard in the record would be relied upon in resolving the change in method of payment allegation.

Later, the record in this matter was reopened pursuant to a motion by counsel for the Charging Party. Included with the General Counsel's subsequent motion to close the record were nine additional workcards, submitted for receipt into evidence, and a stipulation: "All parties herein stipulated [sic] that Respondent's Exhibits 2A–2F inclusive may be received in evidence in their entirety for the primary source material of said Exhibits have been made available to general counsel and the charging party for inspection." Counsel for the Charging Party refused to sign the stipulation, but counsel for the General Counsel had done so, thereby acknowledging that she had reviewed the underlying workcards and, presumably, that the summaries were accurate in all respects, save for the inconsistencies shown by workcards submitted into evidence. However, in Attachment 1 to her brief, the General Counsel argues that two of the summaries should not be considered at all "inasmuch as Respondent offered no original work cards into the record with which these summaries could be compared." Moreover, she argues that the contents of the remaining summaries "should also be discounted as unreliable" based upon the inaccuracies disclosed when they are compared with the workcards which have been offered and received into evidence. In addition, as noted in footnote 2, counsel for the Charging Party moves to strike two of the summaries and part of another for failure to afford her an opportunity to examine the underlying workcards, an assertion which is disputed by counsel for Respondent.

[7] Counsel for the Charging Party chose not to appear at the resumed hearing.

Without belaboring a confused situation unduly, in view of the discussion *infra*, much of the information recorded on both the summaries and the workcards that are in evidence does tend largely to refute the employees' claims that during certain periods of time, they had been obliged to report their hours on a piecework or incentive basis.[8] The documentary evidence, however, is not the only evidence pertaining to the alleged change in the contractually prescribed method of payment.

Both the General Counsel's and Respondent's witnesses agreed that there had been two meetings conducted between the Union and Respondent to resolve employee complaints regarding computation of their hours. One occurred in February and the other in May. The second meeting had been attended by Respondent's president, Roger Zeller.[9] When testifying, Wood denied that he had ever deviated from the method of payment provided by Respondent's agreement with the Union. However, Zeller's testimony as to what had transpired at the May meeting with the Union contradicted Wood's denial:

> Q. Isn't it a fact, Mr. Zeller, that at that particular meeting which was held early in May at the Ventura plant with union representatives, employees and yourself, Mr. Wood and Mr. Thompson, that Advanced employees complained at that meeting of being paid by piece rate?
>
> A. Yes.
>
> Q. Didn't Mr. Wood also state at that meeting that he had placed the employees on an inventive [sic] plan?
>
> A. Yes.

Given the fact that this had been a meeting at which the Union had been protesting Wood's changes in the employees' method of claiming their hours worked, it seems unlikely that Wood would have made such an admission if there had been no such changes.

"It rarely happens that those who are participating in something that is prohibited by law openly and avowedly announce their intention to perform the prohibited act. Thus it is that the courts pay special attention to such statements against interest when in the unusual case it occurs that a party admits that his conduct [has been unlawful]." *Brown Transport Corporation* v. *N.L.R.B.*, 334 F.2d 30, 38 (5th Cir. 1964). Wood's statement to Zeller "amounted to a statement by the responsible management on the important thing which had . . . happened earlier . . . . [and] . . . [I]t was a statement . . . of what [Wood] himself knew firsthand." *N.L.R.B.* v. *L. C. Ferguson, et al.*, 257 F.2d 88, 92 (5th Cir. 1958). That statement by Wood constituted an "outright confession" of unlawful action which "eliminated any question concern-

[8] It is worth noting, however, that a comparison of Beck's summary and workcards prior to February does show an approximate relation between his daily hours and total footage, on the one hand, and the 625-feet figure that he testified that he had been instructed, by Wood, to use as a divisor in computing his hours worked.

[9] The parties stipulated that at all times material, Zeller had been a supervisor within the meaning of Sec. 2(11) of the Act and an agent of Respondent.

ing the intrinsic merits" as to the extent and points in time at which Wood had imposed the piece rate or incentive system of computing hours. *Id.*

Furthermore, Zeller's description of Wood's admission of changes in the employees' method of pay is not the only evidence tending to support the allegation that Respondent had changed the contractually prescribed method. Wood denied generally that he had ever told any employee that he (the employee) should turn in only the number of hours reached by dividing the total footage installed by a figure selected by Wood. Yet, at no point did Wood dispute the specific accounts of remarks concerning this subject attributed to him by employees.

Thus, Donlon testified that when he had been hired, Wood had instructed him to compute the number of hours that he worked by dividing his total footage each day by 600 and, further, that Wood had increased that figure to 650 approximately a year thereafter. Donlon also testified that approximately 2 weeks after the February meeting between Respondent and the Union, he had been summoned to the office where Wood had explained that Respondent's labor costs were higher than those of other companies and had inquired how Donlon liked a piece work system. Similarly, Beck testified that when he had been hired in July 1978, Wood had said to compute his total number of hours each day by dividing 625 into the total footage that he had hung. Webb testified that, shortly after he had commenced working for Respondent in February, Wood had instructed him to use the piece rate computation to determine the number of hours that he worked each day. Further, testified Webb, approximately 2 weeks after the meeting with the Union that Zeller had attended, Wood had said that the employees were claiming too much stocking and travel time, that the footage had to be increased, and that the employees should resume computation of their total hours by the piece rate system. In a like vein, Mills testified that, approximately 2 weeks after the February meeting, Wood had inquired if Mills would like to change to an incentive program of being credited for an hour's work for every 400-square foot of insulation that he hung. According to Mills, in late March or early April, Wood had "told us that we would start hanging 300 feet an hour for an hour's pay and if we didn't like it we could go out the front door and he didn't care if we went and told the union." While, as noted above, Wood generally denied having ever told employees to turn in their hours on a piece rate or incentive basis, he did not specifically deny having made these statements, attributed to him by the employees, and, consequently, "an inference adverse to the Respondent is warranted from the Respondent's failure to elicit testimony [from Wood concerning these conversations]." *Keller Manufacturing Company, Inc.*, 237 NLRB 712, 727 (1978). Thus, I credit the employees' detailed and undenied accounts of Wood's remarks. See, e.g., *Rock-Tenn Company*, 238 NLRB 403, fn. 2 (1978).

In addition to the above-described remarks of Wood, similar comments were attributed to Thompson. Thus, Mergen testified that in late June or early July, Thompson had said that as a probationary apprentice, Mergen had "to put up 2,600 feet for an eight-hour day." Both Mills and Mergen described an occasion, in late July or early August, when they had been reprimanded by Thompson for miscalculating the number of hours claimed by them in light of the total footage that they had hung that day. Thompson told Mills that he should be hanging 463 square feet for an hour's pay. When the two employees disputed Thompson's statements, Wood happened along and confirmed them, in the process taking the employees to his office to show them a chart on Respondent's costs for hanging a square foot of insulation. In a related area, Webb testified that in late June or July, Thompson had been watching Webb fill out his workcard and had said "if you guys keep claiming all of this stocking and travel time, you are just going to find that there is suddenly going to be a lack of work." In early August, testified Webb, both Thompson and Wood had admonished him for claiming stocking and travel time on the previous day. Thompson was called as a witness by Respondent, but was not questioned concerning whether he had made these remarks and, accordingly, they are undisputed. The failure of Respondent to question Thompson as to whether he had made such comments, having called him as its witness, gives rise to an inference that had he been asked, Thompson would have testified in a manner unfavorable to Respondent. *Colorflo Decorator Products, Inc.*, 228 NLRB 408, 410 (1977), enfd. by memorandum opinion 582 F.2d 1289 (9th Cir. 1978). Therefore, I find that Thompson did make the statements attributed to him by Mergen, Mills, and Webb.

That, viewed from his perspective, Wood would have found it desirable to institute a piece rate or incentive program, to measure the working hours of Respondent's employees, is apparent from the circumstances of Respondent's operations. Zeller testified that Respondent had "to strive to live up to the industry standards, and that is the reason why we go out and check the projects, to see, you know, what type of production level we should be looking for." Due to the geographic dispersion of the sites on which Respondent's employees work, Wood is not able to maintain close day-to-day supervision of their work: "I would try to get to the jobsites at least twice a week, which didn't happen all the time." Consequently, the employees were "on an honor system as to producing." Yet, this had not been a particularly satisfactory method of operation, since there is evidence that the employees did not spend their worktime actually performing work and Wood testified that he had complained about "[m]ost everybody's production at different stages."

Indeed, as set forth above, following the first meeting with the Union in February, which had resulted in restoration of the contractually prescribed method of claiming hours, Wood had complained to Donlon that Respondent's labor costs were higher than those of its competitors. Inasmuch as the piece rate method of claiming hours resulted in a certain amount of footage having to be hung to claim an hour's pay, it was a naturally more effective method of ensuring that the cost of labor would be reduced by eliminating the time that slower workers would need to install that amount of insulation. Moreover, it had the natural tendency of eliminating claims

for time spent loading, unloading, and handling materials, as well as the time absorbed by traveling between the shop and jobs and between jobs. In short, it rendered Respondent more competitive and minimized the need for Wood to encourage employees to higher production. Yet, "[a]n employer cannot alter mandatory contractual terms during the effective period of the agreement without the consent of the union. . . . [and] . . . a repudiation is not excused because the employer . . . was motivated solely by economic necessity." (Citations omitted.) *Los Angeles Marine Hardware Co., etc.* v. *N.L.R.B.*, 602 F.2d 1302, 1307 (9th Cir. 1979).

Significantly, notwithstanding his denial, Wood's own testimony concerning the February and May meetings between Respondent and the Union tends to confirm the conclusion that he had instituted a method of reporting working hours that differed from what was required in the collective-bargaining agreement. For, he admitted that both meetings had occurred. He conceded that at both of them the Union and the employees had complained about the latter not being paid on an hourly basis and not being paid for loading and travel time. He agreed that at the May meeting Zeller had instructed him to reinstate the hourly method of payment—an instruction which would have made no sense unless Wood had, in fact, changed that method. He acknowledged that at the February meeting no representative of the Union had agreed that Respondent had been paying wages on an hourly basis, thereby inferentially acknowledging that the employees' complaints to the Union at that time had not been invalid.

In the final analysis, while the documentary evidence is not fully consistent with the testimony of the employees as to the precise points in time at which Wood had imposed the piece rate or incentive method and with regard at the duration of those periods when they had been obliged to observe changes in the system, that is not the determinative consideration pertaining to the issue of whether there had been changes. Inasmuch as some types of work, i.e., commercial jobs, were assigned differing production rates than others and in view of the fact that certain projects were assigned lower production rates, due to their difficulty, the summaries and workcards could not, in any event, be relied upon fully in light of the absence of complete information, in the record, as to the nature of all projects encompassed during the period commencing November 3, 1978. What is clear, however, is that Wood did admit, during the May meeting, that he had instituted changes in the method of computing employees' hours. There is evidence that he had possessed motivation for doing so. It is undisputed that, on various occasions, the employees had been instructed to compute their total hours on the basis of the amount of square footage installed.

Therefore, a preponderance of the evidence does support the conclusion that there had been occasions when Respondent changed the contractual method of paying employees in a manner that deprived them of payment for actual hours worked installing insulation and, further, that naturally resulted in a loss of payment for time spent loading, unloading, handling materials, and traveling between worksites and between the shop and worksites. Additionally, the resultant reduction of hours occasioned by these changes had the concomitant effect of reducing contributions to the contractually specified funds. Therefore, I find that a preponderance of the evidence supports the conclusion that Respondent had altered the terms and conditions of its collective-bargaining agreement with the Union in violation of Section 8(a)(5) and (1) of the Act.

That the times at which Respondent changed the system of computing work hours and that the durations of those periods cannot be determined with precision on the basis of this record is of no consequence, in the final analysis, to the issue of the commission of a violation of the Act. For, the extent of this type of violation, its times of occurrence, and the duration of each of those occurrences are matters pertaining to the amounts of backpay owing for the violation committed. As was pointed out in the concurring opinion of Justice Frankfurter in *N.L.R.B.* v. *Deena Artware, Inc., et al.*, 361 U.S. 398, 412 (1960), the separation of the finding that an employer's conduct violated the Act from the determination of the amounts of backpay owing is "an eminently reasonable method for administering the Act . . . ." It is not unusual for issues involving the scope of the remedy to be deferred to the compliance stage. See, e.g., *The Torrington Company* v. *N.L.R.B.*, 545 F.2d 840, 842 (2d Cir. 1976); *The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, et al.* v. *N.L.R.B.*, 565 F.2d 1240, 1247 (2d Cir. 1977). Therefore, it is unnecessary at this point to attempt to delineate the exact dates of the changes from the contractually specified methods of computing wages, the durations of those changes, the precise employees affected thereby and the amounts of backpay to which each of those employees are entitled as a result of the changes.

B. *The Comments Attributed to Wood and Thompson*

As set forth in section III, *supra*, a number of statements are alleged to have been made by Wood and Thompson which constituted violations of Section 8(a)(1) of the Act. For example, it is alleged that Respondent had directed threats to employees. As set forth in section IV, A, *supra*, Wood had warned that if the employees did not like hanging 300 feet an hour, they "could go out the front door . . . ." Clearly, this constituted a threat to discharge employees who failed to observe the unilaterally imposed piece rate system of computing their working hours. Further, it is not disputed that, in late June or early July, Thompson had warned Webb that "if you guys keep claiming all of this stocking and travel time, you are just going to find that there is suddenly going to be a lack of work." Yet, payment for performance of stocking and travel was guaranteed to the employees under the collective-bargaining agreement and there is no showing that the employees had made any claims for time that they had not actually done that work. Therefore, I find that a preponderance of the evidence does support the allegation that Respondent violated Section 8(a)(1) of the Act by threatening discharge if employees failed to acquiesce in Respondent's unilateral changes and sought to claim benefits to which they were

entitled under Respondent's collective-bargaining agreement with the Union.

With regard to the allegations of interrogation, prior to the February meeting between Respondent and the Union, the latter's representatives had spoken to the employees and, during the discussion, Respondent's change in the method of computing hours had been mentioned. It is undisputed that following that discussion Wood had summoned Beck to the office, had asked what had been said when the representatives had spoken with the employees, and had inquired what Beck and the other employees thought about being paid on an hourly basis. It is also undisputed that, in July, Wood had asked Mills if the latter "had filled out a statement in favor of the union. . . ." On August 24, both Mills and Mergen did complete such statements, regarding Respondent's changes in the method of computing hours. Wood, who testified that Mergen and Mills had volunteered that they had been asked for statements by the Union,[10] admitted having asked them if they had done so. Further, he did not dispute having also inquired what the two employees had written on their statements and, moreover, having asked Mills, independently, what Mergen had written on his statement.

There is also evidence that Thompson had interrogated employees. In July, Union Representative Jim Kelly had made three trips to Respondent's Ventura facility to check on dues. On each of these occasions, Webb had spoken to Kelly about Respondent's method of computing the working hours of the employees. It is uncontroverted that after each of the first two visits by Kelly, Thompson had asked Webb "what Kelly was doing there," and also what had been said by Kelly. On both occasions, Webb replied merely that his discussions with Kelly had pertained to dues. After Kelly's third visit, it is undisputed that Wood had inquired what Kelly had wanted. Again, Webb replied that the discussion had pertained to dues.

"Any interrogation by the employer relating to union matters presents an ever present danger of coercing employees in violation of their §7 rights." *Texas Industries, Inc., et al.* v. *N.L.R.B.*, 336 F.2d 128, 133 (5th Cir. 1964). For interrogation can "be a very subtle weapon for interfering with employee rights . . . ." *Ridgewood Management Company, Inc.* v. *N.L.R.B.*, 410 F.2d 738, 740 (5th Cir. 1969), cert. denied 396 U.S. 832 (1969). Here Respondent's questioning had been directed to the substance of communications between employees and their bargaining representative with regard to their method of payment. Employees have a right to confer with and to seek the assistance of their bargaining representative in disputes with management concerning their work. See, e.g., *Inter-Polymer Industries, Inc.* v. *N.L.R.B.*, 480 F.2d 631, 633 (9th Cir. 1973). Respondent has shown no legitimate purpose for seeking to ascertain what the substance of these conversations had been about. "There is no evidence in the record that [Respondent] assured [the employees] against reprisal or that [Wood or Thompson] told them why they were being questioned." *Clear Pine Mouldings, Inc.* v. *N.L.R.B.*, 632 F.2d 721-725 (9th Cir. 1980). Some of the questioning occurred in the office and, further, the fact that Webb told Thompson and, then, Wood that Kelly had merely been discussing dues, when that had not been the fact, serves to indicate Webb's "natural fears about such questioning." *N.L.R.B.* v. *Cement Transport, Inc.*, 490 F.2d 1024, 1028 (6th Cir. 1974), cert. denied 491 U.S. 828 (1974). Finally, these conversations had not occurred in an atmosphere free of unfair labor practices, but, as found above and below, Respondent had been engaging in other unfair labor practices. Therefore, I find that the questioning by Wood and Thompson had been coercive and, accordingly, had violated Section 8(a)(1) of the Act. See, generally, *World Wide Press, Inc.*, 242 NLRB 346, 363 (1979), and *Sourdough Sales, Inc., d/b/a Kut Rate Kid and Shop Kwik*, 246 NLRB 106, 117 (1979), and cases cited therein.

In a somewhat different area, it is undisputed that Wood had asked Beck if he and the other employees liked being paid on an hourly basis and, further, had inquired if Mills would prefer working under an incentive program, providing an hour's pay for every 400 square feet of insulation installed. But the collective-bargaining agreement specified the method of computing working hours and payment therefor. It is the Union, not the employees, with whom Respondent is obliged to bargain about these matters. There was, consequently, no legitimate purpose for such questioning and none was advanced by Respondent, either to the employees questioned or during the hearing in this proceeding. As found above, Respondent, on several occasions, unlawfully changed the contractually prescribed method of computing hours by instituting a method that related number of daily hours to total square footage hung each day. Questioning such as that set forth above was intended as a vehicle for ascertaining the employees' attitudes toward the adequacy of the contractual method of payment and their willingness to acquiesce in Respondent's then-contemplated—and later implemented—changes. Inasmuch as Respondent was obliged to deal exclusively with the Union concerning the terms of these employees' employment, *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678, 683-684 (1944), and was not free to change contractual terms without the Union's consent, *Los Angeles Marine Hardware, supra*, such questions constitute an effort to bypass the Union and to deal directly with the employees concerning their terms of employment. As such, they violated Section 8(a)(5) and (1) of the Act.

Finally, in this area, the General Counsel alleges that Wood had solicited an employee, Robert Liening, to engage in surveillance of other employees' protected activity. The only evidence pertaining to this allegation is that on one evening, Liening had tape-recorded what had been said at a union meeting and that the tape recorder had been observed in Wood's office on the following morning. Liening was never called to explain why he had recorded what had been said that night—whether at Respondent's behest or for some reason personal to him, possibly relating to internal union affairs

[10] Mills denied having ever taken the initiative by telling Wood about the statement.

also discussed at that same meeting.[11] There is no evidence concerning ownership of the tape recorder. If it belonged to Respondent, the record is equally susceptible of an inference that Liening had borrowed it, without disclosing his purpose, as of an inference that Respondent had given it to him to record the words spoken at the meeting. If it belonged to Liening, the record is as susceptible to an inference that he had left it in the office that morning for safekeeping, during the time that he would be working on a project site, as it is of the inference that he had brought it to the office to play the recording of the prior evening's events. Furthermore, even if the latter had occurred, that is still not evidence that the recording had been made at Wood's behest, as opposed to having been proffered voluntarily for him to listen to the recording. Indeed, there is no evidence that Wood even had been willing to listen to what had been recorded. Certainly, so far as the record discloses, no official of Respondent ever mentioned any of the matters discussed at the Union's meeting that night and recorded by Liening. In these circumstances, I conclude that it would be sheer speculation to reach the conclusion, on the basis of this record, that Wood had solicited Liening to tape record the Union's meeting and, accordingly, I find that that allegation is not supported by a preponderance of the evidence.

C. *The Spring Suspensions and Discharge of Beck*

The complaint alleges that in March, Frank Pagano had been suspended for 1 day because of his union or protected concerted activity. The record discloses that, in late February or early March, Pagano had become shop steward. It is undisputed that in April Pagano had asked Wood why his (Wood's) formerly friendly attitude had changed and that Wood had replied that it had been because Pagano was now shop steward, not simply a hanger, and that he (Wood) hated the Union.

However, while the answer admitted that Pagano had been suspended for 1 day in March, Wood denied that there had been a suspension and, more significantly, Pagano also denied that he had been suspended for 1 day. Pagano did acknowledge that there had been a day when he had been reprimanded by Wood for low production. However, he testified: "I can't remember if I worked the next day or not, but I was never refused work." In arguing that it should be concluded that Pagano had been suspended for 1 day in March, the General Counsel points to the fact that, at the time of the hearing, Pagano had been again working for Respondent, had been a friend of Wood, and had testified that he would do what he had to do to keep his job. Yet, in a pretrial affidavit, given shortly after he had quit Respondent and thus at a time when he would have had no concern about loss of employment with Respondent, Pagano makes no mention of having been laid off for 1 day in March. To the contrary, while he describes Wood's reprimand for low production and the fact that Beck had been laid off for 1 day due to low footage, Pagano states: "Other than Beck, I have never heard of an employee being given a day off for low footage."

Although Respondent's counsel filed an answer admitting that there had been a 1-day suspension, both Wood and Pagano, the persons having firsthand knowledge of what had occurred or had not occurred, denied that any such act had taken place. This tends to be reinforced by the substance of Pagano's affidavit, which, in contrast to his position at the time of the hearing, was given at a time when he had not been employed by Respondent, having quit, and when he presumably would not have been concerned with any adverse effects upon possibilities of continued employment with Respondent. Therefore, I find that a preponderance of the evidence does not support the allegation that Pagano had been suspended for 1 day because of his union or protected activity.

Eric Beck was a journeyman who had commenced working for Respondent in July 1978. On the evening of April 4, Beck had telephoned Thompson to report the amount of footage that he had hung that day. Upon hearing Beck's reported footage, it is undisputed that Thompson had observed that "it was looking good." Beck, who had been breaking in new employees for some period of time, then had asked if Thompson could refrain from sending him (Beck) out with apprentices for awhile. Thompson replied that Beck "didn't have to worry about it because I got the next day off."[12] At Thompson's suggestion, Beck telephoned Wood, who said that Beck's footage had not been commendable and that Beck "should bring it up . . . ." Asked at the hearing why he had laid off Beck for 1 day, Wood testified: "Lack of production on one job and I wanted to try somebody else on that same job to see if we couldn't get the production."

Several points must be focused with regard to Respondent's defense to Beck's suspension. First, no workcard was presented at the hearing for Beck's work on April 4. The summary shows that he had spent 7 hours installing insulation at Raznick on that day, plus 1 hour stocking. So far as the summary discloses, the only previous time that Beck had worked there was on an unspecified date during the week of February 26 through March 2. Thus, it is somewhat difficult to perceive how Wood, before even having learned of Beck's production at Raznick on April 4, which Thompson had characterized as "looking good," could have made the decision to replace

[11] So far as the record discloses, Liening was equally available as a witness to all parties in this proceeding. See, e.g., *Soldier Creek Coal Company, a Division of California Portland Cement Co.*, 243 NLRB 456, fn. 1 (1979); *CTS Keene, Inc.*, 247 NLRB 1016, fn. 2 (1980). Yet, as in other areas, the burden of establishing that, as alleged, Wood had solicited Liening to engage in this conduct is that of the General Counsel. "The burden of establishing every element of a violation under the Act is on the General Counsel." *Western Tug and Barge Corporation*, 207 NLRB 163, fn. 1 (1973).

[12] The answer admits the allegation that Beck had been suspended for 1 day on April 6. Significantly, the summary for Beck shows that he had worked each day during the week of April 2 through 6, with 8 hours and 4,576 square feet shown at Raznick on Thursday, April 5, and with 6 hours and 3,053 square feet shown at Griffin on Friday, April 6. There is a workcard, filled out by Beck, for April 6 and he testified that he had been suspended on Thursday, not Friday. Accordingly, the correct date of his suspension is April 5. While the summary for him shows that he had worked on April 5, examination of his workcards for April discloses that none was produced for that date and it is admitted that Beck, unlike Pagano, had been suspended for 1 day by Wood.

him on that job in order to ascertain "if we couldn't get the production."

Second, again using Respondent's summary of Beck's work, during the month preceding his suspension on April 5, there had been no consistency in his work assignments. Rather, his assignments had been to various projects: Larwin on March 7 and March 12 through 15; Greenspan on March 16; Marbrough on March 22 and 23; Arthur Brown on March 14; W & T on April 2; Bailey on April 3; McKeon on March 5, 22, 26, and 30 and April 2; and Spriggs on March 6, 8, 9, 28, and 29 and April 3. If it had not been the Raznick job to which Wood had been referring, then it is difficult to ascertain what other "one job" it had been at which Beck had assertedly displayed a lack of production.

Third, while Wood testified that he had wanted "to try someone else on that same job to see if we couldn't get the production," at no point did he specify who that "someone else" had been. Nor did he describe whether the "someone else" had, in fact, performed better than had Beck at whatever "one project" about which Wood purportedly had been concerned. Significantly, the two projects on which Beck had worked most frequently prior to his suspension, McKeon and Spriggs, were ones to which he was again assigned to work following the suspension: McKeon on April 9 through 13 and April 16 and Spriggs on Tuesday, April 24.

Finally, Wood testified that he had found Beck's performance and attitude acceptable prior to his discharge on April 25 and, further, he admitted that, prior to Beck's suspension, Respondent, or at least Wood, had never suspended a journeyman for lack of production. Wood did not explain why, given Beck's acceptable performance and the fact that he had been employed by Respondent for a significant period of time, he had chosen to alter Respondent's normal procedure and to suspend Beck.

Within a week of his return to work from the suspension, Beck had been told by Wood that he had a week to increase his footage. Beck testified that, on the day prior to his termination, Wood and Thompson had instructed him to resume computing his hours on a piece rate basis, this time using 600 as a divisor. Beck further testified that at the end of that workday, he had turned in a workcard claiming 8 hours worked and 2,860 square feet of insulation installed.[13] That evening, Beck telephoned Union Representative Kelly, advising him of what had occurred concerning the change in method of computing hours. Kelly promised to meet Beck at Respondent's Ventura facility the next morning. On the following morning, Kelly and Beck arrived there before Wood. The only description of what then had occurred, once Wood did appear, is the somewhat brief account that Beck was asked to provide: "Bob Wood came in, walked into his office and came back out and handed me an envelope with two payroll checks in it."

Wood testified that he had been the official who had made the decision to terminate Beck and he denied that Beck's union activities had influenced that decision. Rather, he testified that his decision had been based exclusively upon Beck's "[l]ack of production." In arriving at that decision, Wood testified that he had compared Beck's workcards at the Spriggs project with those of other employees working there and had discovered that Beck had done less work than those employees: "I would have three or four other men on the same job that I would have, take for instance, Mr. Beck on. The three or four men come in with the same or more production for the eight hours, where Mr. Beck would be 50 percent, 60 percent. That to me is lack of production."

As was true with regard to Beck's suspension, several factors pertaining to Wood's explanation of the discharge decision must be examined. First, as noted above, according to Respondent's summary, Beck had worked but a single day at the Spriggs project following his suspension. Wood admitted that prior to the discharge, Beck's production had been acceptable. Consequently, it is somewhat difficult to find support in the record for Wood's claim that Beck had produced less at Spriggs than three or four other employees during the 3-week to 1-month period before he had been discharged.

Second, when called as an adverse witness by the General Counsel, near the beginning of the hearing, Wood was asked to identify the employees whose workcards had been used in comparison with those of Beck. In response, Wood testified, "Offhand I don't know." When he was later called as a witness during Respondent's case-in-chief and was asked the same question, Wood responded: "Bob Liening, probably Pat Donlon, Frank Pagano." He added that "there could have been some others in there too. I can't remember." Then, when this question about the identities of the other employees was pursued on cross-examination, the following exchanges occurred:

> Q. Didn't you mention that Mr. Donlon was one of the apprentices who had higher footage than Mr. Beck, on Spriggs?
>
> A. No.
>
> Q. Isn't Mr. Donlon a journeyman?
>
> A. Yes.
>
> Q. Did you use Mr. Donlon's footage at Spriggs, as a basis for determining whether or not Mr. Beck was producing up to par?
>
> A. I can't recall.
>
> * * * * *
>
> Q. Isn't it a fact that Mr. Liening was one of the journeymen whose footage you compared to Mr. Beck's, in determining that Mr. Beck's footage was unsatisfactory on the Spriggs job?
>
> A. Possibly.
>
> Q. Do you remember testifying to that effect?
>
> A. I probably did use Bob Liening as a fact, yes.
>
> Q. Isn't it a fact that Mr. Liening only worked on the Spriggs job three times since January of '79?
>
> A. I don't know.

[13] The summary for Beck lists Tuesday, April 24, as the last day that he worked. It shows that he had claimed 8 hours worked for installing 2,680 square feet of insulation at Spriggs. No workcard for April 24 was included among those produced by Respondent at the hearing.

Third, Wood testified that he had compared Beck's record at Spriggs with that of other employees who had worked there during the period 3 weeks to a month prior to the April 25 termination. According to the summary for Beck, he had worked at the project on only four occasions between, taking a broad measuring period, March 19 and April 24: 6 hours on March 28, when he had installed 2,720 square feet of insulation; 7 hours on March 19, when he had installed 2,083 square feet of insulation; 2 hours on April 3, when he had installed 560 square feet of insulation; and, on April 24. No summary was produced for Liening's work during that period and examination of the workcards for that period[14] discloses that none for Liening were included. Accordingly, Wood's assertion that Liening had outproduced Beck during that period at Spriggs is uncorroborated. Moreover, Respondent's failure to produce Liening's records to support its defense gives rise to an inference that, if produced, those records would not have supported Wood's testimony concerning their contents. *Colorflo Decorator Products, supra*, 228 NLRB at 417. That such an inference is warranted in this case is confirmed by examination of the summary for Donlon (Resp. Exh. 2A). It purportedly lists all of the projects on which he had worked for Respondent between November 1, 1978, and September 14, when he had quit. There is not one listing of any work performed at Spriggs on that summary. Nor is there any workcard showing that he had worked even an hour at that project.

Examination of journeyman Pagano's summary shows that between March 19 and April 20, when he had quit, Pagano had worked at Spriggs on but four occasions: March 28, when he had installed 2,225 square feet of insulation in 6 hours; March 30, when he had installed 4,211 square feet of insulation in 8 hours; April 2, when he had installed 3,869 square feet of insulation in 8 hours; and, April 3, when he had installed 3,360 square feet of insulation in 8 hours. While these figures are, for the most part, better than Beck had achieved at Spriggs, they are significantly lower than the 550-square-feet-per-hour standard that Wood had asserted was a reasonable production figure at Spriggs.[15] Moreover, it is undisputed that Beck had worked on the second floor of the Spriggs project, where the work had been harder and where less footage could be hung in a given time than on the first floor. Notwithstanding Pagano's failure to satisfy Wood's production standard, there is no evidence that his termination had been so much as contemplated.[16]

Finally, Wood admitted that Respondent had followed a policy of transferring employees to different sites whenever they had low footages at particular sites. Yet, it did not do so in Beck's case. The only explanation for not having done so advanced by Wood was that "We had a lot of jobs on the lineup, and very few men with knowledge enough to know what was going on," and "I needed his labor." Left unexplained by Wood was how the termination of Beck, as opposed to an exchange of sites between Beck and another journeyman who had been working at another site, accomplished the objective of servicing all these jobs by the few men with knowledge available to Respondent. Also unexplained was why Wood had decided, for the very first time, to discharge an employee for assertedly low production.

In sum, Respondent's defense with respect to Beck's suspension and discharge was something less than a model of plausibility and consistency. Wood was not a convincing witness when testifying concerning these matters. Some of his assertions, such as his claim that Liening had produced better than Beck at Spriggs, were not supported by the production of corroborating documentary evidence. Others, such as his contention that Donlon's production at Spriggs had been better than that of Beck, were contrary to what documentary evidence was produced. He did not deny that Beck had been training newly hired employees prior to April 6, thereby impairing the latter's productivity, and he made no effort to explain specifically which project had been the one that had concerned him prior to that suspension. Nor did Respondent see fit to explain in what manner the suspension had cured the defect that it claimed had led to that suspension—specifically, the identity of the "someone else" who had purportedly been selected to replace Beck. Overlying all of these matters was the unexplained question of why a journeyman, whose employment by Respondent had been relatively lengthy and who had been an admittedly adequate producer, was abruptly suspended and then discharged for low production when Respondent had never before adopted such an extreme penalty for low production and in the face of a policy of switching low producers to alternative projects. Therefore, I do not credit Wood's testimony and I conclude that Respondent has advanced reasons for Beck's suspension and discharge that are false.

In assessing allegations that conduct directed against employees had been unlawfully motivated, the crucial inquiry must be directed to the state of mind of the official who had made the decision to effectuate that conduct. See *American Petrofina Company of Texas*, 247 NLRB 183, 189 (1980). "If . . . the stated motive for a discharge is false, [the trier of fact] certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where . . . the surrounding facts tend to reinforce that inference." *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966).

The record in this case does show surrounding facts sufficient to reinforce the inference that Respondent had been motivated by unlawful considerations when it had

[14] Resp. Exhs. 7CCC through BBBB, and 8A through DDDD.

[15] Thus, gauged by that standard, 3,300 square feet should have been installed in 6 hours, 3,850 square feet in 7 hours, and 4,400 square feet in 8 hours. Measured by Wood's standard, only on March 30 did Pagano's production come even close to being satisfactory. Furthermore, Pagano's production of 2,225 square feet in 6 hours on March 28 is less than Beck's production of 2,720 square feet in that same time on that same date.

[16] Examination of the timecards produced by Respondent disclose that three other employees had worked at Spriggs between March 19 and April 24. David Mills and Jim Burlingame listed Spriggs on their workcards for March 28 through 30 (Resp. Exhs. 7JJJJ, PPPP, and AAAAA), and for April 3 (Resp. Exh. 8K), when they apparently did not install any insulation there. However, on April 24, Mills claimed 5-1/2 hours for installing 1,505 square feet and Webb claimed 6 hours for installing 1,777.50 square feet of insulation (Resp. Exhs. 8BBBB and DDDD, respectively).

suspended and later had discharged Beck. As found above, Respondent had been unhappy with the contractually prescribed method of determining working hours. On several occasions, it had made changes in that method only to be compelled to reinstate the contractual method when the changes were discovered by the Union. That Respondent had become sensitive to what its employees were telling the Union is illustrated by Wood's and Thompson's questioning of the employees, as described and found unlawful in section IV, B, *supra*. As set forth in that same subsection, Beck had been one of the employees singled out for such interrogation by Wood, both as to what the Union's representatives had been saying to the employees and as to Beck's and the other employees' feelings about being paid on a straight hourly basis. In Beck's case, Respondent undertook its interrogation at an early point—in February. In March, Wood again questioned Beck's preference as to the method of computing hours. On both occasions, Beck stated that he liked, in effect, the method required by Respondent's collective-bargaining agreement. Wood conceded that prior to his discharge, Beck had been one of the few employees who had continually claimed between 6 and 8 hours of work per day as prescribed by that agreement. Finally, in view of the sketchy description of the termination conversation, it cannot be said that Kelly's presence with Beck had led Wood to discharge the latter. However, this discharge occurred on the day after Beck had been instructed specifically to observe the piecerate method of computing work hours and on the morning after Beck had turned in a workcard that listed his hours in the manner prescribed by the collective-bargaining agreement.

In light of Respondent's opposition to the contractual method of claiming hours worked, Beck's expressions of preference for that method when singled out and questioned about it by Respondent, Beck's refusal to change to the piecerate method as instructed by Respondent, and the false reasons advanced by Respondent for his suspension and subsequent discharge, a preponderance of the evidence supports the contention that Beck's suspension had been intended as a warning to Beck and other employees of the consequences that could follow if they continued to insist upon the contractual method of computing worktime and, further, that Beck's discharge had resulted from his failure to heed that warning—that is, his refusal to change his method of claiming hours to the piecerate method imposed by Respondent. An employer "creates intolerable working conditions" when it compels its employees to accept continued employment on the basis of terms which have resulted from unilateral changes in its collective-bargaining agreement. *N.L.R.B.* v. *Haberman Construction Company*, 618 F.2d 296–297 (5th Cir. 1980). *A fortiori*, suspension or discharge of employees because of their opposition to such changes and due to their refusal to abide by them violates Section 8(a)(3) and (1) of the Act. That is what happened with regard to Beck.

D. *The Severances of the Employment Relation Between Respondent and Webb, Mills, and Mergen*

During August, three employees ceased working for Respondent: Webb, Mills, and Mergen. The General Counsel contends that they had been terminated by Respondent. Respondent asserts that they had quit. Inasmuch as Webb's cessation of employment with Respondent occurred separately from that of Mills and Mergen, and occurred earlier in August, consideration will first be accorded to the events pertaining to him.

Webb had been employed by Respondent as an apprentice since mid-February. During early August, Respondent ceased assigning him work and finally he accepted employment elsewhere. As set forth in section IV, B, *supra*, Webb had been interrogated on three occasions during July, regarding the substance of his conversations with Union Representative Kelly, following the three occasions when the latter had visited Respondent's Ventura facility that month. Moreover, it is undisputed that on two or three occasions when Webb had voiced complaints about conditions that he had perceived as being unsafe, Thompson had accused him of being a "shop disrupter." Additionally, as set forth in section IV, B, *supra*, in late June or early July, Thompson had warned Webb that there was "suddenly going to be a lack of work" if he and the other employees kept claiming stocking and travel time. In fact, it is uncontroverted that Respondent's officials had complained regularly to the employees about their claims for stocking and travel time. Webb testified, without contradiction, that at some point in August, Wood had complained about Webb's claims for stocking and travel time and that he (Webb) had retorted that he intended "to go by the rules now."[17]

Webb testified that he had called in sick on one day in August and that thereafter, though he had called and visited Respondent's Ventura facility, he had never been assigned work. He testified that during his visits he had observed that other, less senior, apprentices were being dispatched to projects by Respondent. This testimony was confirmed by Wood, who testified that at least one first-stage apprentice and third-stage apprentice Mergen, who had less seniority than Webb, had been dispatched during this period.[18] According to Wood, the basis for his decision to assign work to apprentices other than Webb had been "[p]roduction": "I had a man with less seniority which is a lower-grade trainee at that time that was doing more production and that is the man that I worked." Wood identified Darwin Skelly as having been the more productive employee that he had dispatched instead of Webb. Later, he added that, in addition to Skelly, he had also compared Webb's performance with

[17] Respondent's summary for Webb shows that his last day of work had been Tuesday, August 7, when he had installed insulation at Bulmer-Ramm. He testified that it had been at that location where he had been working when Wood had broached him about claiming stocking and travel time. Significantly, the summary shows that on the prior day Webb had claimed 6 hours' pay for installing insulation and 2 hours' pay for travel time. In light of the proximity of this claim for travel time and the absence of evidence that Webb had worked at Bulmer-Ramm on any other day in August, I find that this conversation had occurred on Monday, August 6.

[18] Webb had been classified as a third-stage apprentice at this time.

that of Frank Orona[19] and possibly other unidentified employees. He further testified that he had arrived at his conclusion through both personal observation and through comparison of Webb's workcards with those of Skelly and Orona. Yet, as had been true in the case of Beck, Wood did not appear to be testifying candidly when he described his reasons for ceasing to make assignments to Webb. Examination of the record confirms that conclusion.

First, in effect, Wood immediately retracted his assertion that based upon his personal observation Skelly had been doing more work than had Webb at the time that he had visited sites where they had been working:

> I would go out to a job. I would see Darwin working where I would see Don Webb drinking a cup of coffee, smoking a cigarette; not all the time. There were a lot of times I went out and Darwin was drinking coffee or smoking cigarettes and Don Webb was working. But, at the total end of the week there was more production on Darwin's footage list, his timesheet.

Second, Wood appeared evasive and, in the final analysis, it was unclear just what period of time had been encompassed by his purported comparison of Webb's workcards with those of Skelly and Orona:

> JUDGE PANNIER: Did you just do it for a week, or did you do it for more than a week?
>
> THE WITNESS: There was more than a week. I think Darwin had been with us for a couple of months and Don Webb had been there for three or four months.
>
> Q. (By Ms. March) What period of time did you focus on in making the determination?
>
> A. That I can't pinpoint because I have worked with these men everyday. I know just about what each one can do and who is going to work than the next person. If things get slower, then the man that goes out there and works, stays on the job, puts in more production during the eight-hour period is naturally going to get to work more than the guy that is a slower person or takes more breaks or whatever.
>
> * * * * *
>
> Q. Also in regard to Mr. Webb, what exactly did you look at to compare Mr. Webb with Mr. Skelley [sic]?
>
> A. Production.
>
> Q. Okay, and you said you looked at the timecards and jobsite inspection. Is that correct?
>
> (No response)
>
> Okay, and what job were you looking at?
>
> A. I don't know.
>
> Q. You don't know the name of the job?
>
> A. They could be in one week on four, five, six or seven different jobs.
>
> Q. Okay, so you weren't looking at one particular job?
>
> A. No.

Third, in contrast to its procedure regarding the General Counsel's employee-witnesses, Respondent never presented summaries of Orona's and of Skelly's daily hours and square footage of insulation installed. Nor did it produce workcards for either man, so that a comparison could be made between their production and that of Webb. Counsel for the General Counsel did introduce some of the workcards completed by Orona and Skelly. Examination of these cards discloses that, as a general proposition, subject to sporadic exceptions, they do not support Wood's claim that these two apprentices had been more productive than had been Webb.

In the case of Orona, who had worked only from late June to early July,[20] the seven workcards produced (G.C. Exhs. 17J and 18A, D, F, I, J, and L) show that his greatest footage ever installed, on July 2, had been 4,600 square feet and that it had taken him 8 hours to do it. Yet, for example, on June 29, Webb had spent the same amount of time hanging 4,961.46 square feet of insulation (Resp. Exh. 10FFF). Moreover, Orona's other workcards show that it had taken him 8 hours to install 1,694.5 square feet on July 5, 8 hours to install 1,603.50 square feet on July 6, 6 hours to install 721.5 square feet on July 9 and 6 hours to install 1,220 square feet on July 10, which appears to have been the last day during which he had worked for Respondent. Even a cursory examination of Webb's total footage during that same period of time shows that Orona had been infinitely less productive, contrary to Wood's assertion. Thus, while Webb had installed the same amount of insulation as had Orona in the same amount of time on July 5, on the following day Webb had installed 1,930.5 square feet in 5 hours (Resp. Exh. 11M). Further, Webb had installed 1,245.00 square feet in 6 hours on July 9 (Resp. Exh. 11R), 3,236.50 in 8 hours on July 10 (Resp. Exh. 11W), and 2,680.50 square feet in 5 hours on July 11 (Resp. Exh. 11AA).

Though more of Skelly's workcards are available than is the case with Orona and while Skelly had been employed in August when Respondent had ceased assigning work to Webb, it cannot be said that the cards show that there had been a clear difference in production between those two employees. For example, at no time did Skelly ever install nearly as much insulation as had Webb on June 29, when he had installed 4,961.48 square feet in 8 hours (Resp. Exh. 10FFF). So far as the workcards disclose, the lowest amount of total square footage that Webb ever had hung during July and August had been 1,200 square feet on July 18, when he had worked for 4 hours (Resp. Exh. 11PP). Yet, on that same date and in that same amount of time, Skelly had installed but 1,160 square feet of insulation (G.C. Exh. 18T). True, by choosing differing standards of comparison, it is possible to formulate comparisons that tend to show that Skelly

[19] Although spelled "Corona" in the transcript, the workcards that he completed show that his correct surname is "Orona."

[20] At no point did Wood see fit to explain why he had resorted to the workcards of an employee no longer employed by Respondent in making his asserted comparison with the work that Webb had performed.

had been more productive than had been Webb. Conversely, it is also possible to select other standards that would show Webb to have been the more productive of these two employees. However, it is not the responsibility of the trier of fact to patch together evidence to support a respondent's defense. See, e.g., *Tri-State Carpenters & Joiners District Council*, 250 NLRB 901 (1980). Rather, it is Respondent, specifically Wood, who bears the burden of showing the manner in which the workcards of Skelly and Webb had been compared to derive the conclusion that Skelly had been the more productive one. This it did not do and, absent that explanation, it cannot be said that the workcards clearly show that Webb had been less productive than had been Skelly.

As found above, Respondent had been opposed to observing the contractually specified method for computing working hours. It had admittedly changed that method of computation. It had engaged in unfair labor practices to compel its employees to accept those changes and had warned that refusal to observe the changes would lead to "a lack of work." It had resorted to the extreme unfair labor practice of discharging Beck on the morning after he had displayed his opposition to such a change and his refusal to observe the unlawfully imposed changes. Webb had been viewed as a "shop disrupter" by Respondent and had been questioned by both Wood and Thompson concerning his communications with the Union. He had been warned that lack of work would follow from continued claims for stocking and travel time. Yet, he persisted in claiming payment for time spent traveling and, on his last workday, had said explicitly that he intended "to go by the rules now." Thereafter, Thompson's prediction was fulfilled and Webb was included among those employees not assigned work on projects. Ultimately, he accepted employment elsewhere when he received no further assignments from Respondent. Wood's explanation for the selection of Webb as an employee to whom work would not be assigned was not credible, being general, vague, contradictory, largely not supported by documentary evidence upon which he claims to have relied, and not consistent with what documentary evidence has been produced.

In these circumstances, I find that Webb's ultimate abandonment of further efforts to obtain work from Respondent and his acceptance of employment elsewhere resulted from Respondent's failure to assign him further work. A preponderance of the evidence supports the conclusion that Respondent has stopped assigning him work due to his opposition to and refusal to abide by Respondent's unlawful changes in the method of computing working hours provided in its collective-bargaining agreement with the Union. In these circumstances, I find that Webb had been constructively discharged in violation of Section 8(a)(3) and (1) of the Act. See, e.g., *Haberman Construction, supra; Electric Machinery Company*, 243 NLRB 239, 240 (1979).

With regard to Mills and Mergen, the crucial facts are largely undisputed. Both of them had worked almost daily since the beginning of June. As set forth in section IV,A, *supra*, on Friday, August 24, these two employees had given written statements to the Union concerning the method by which their work hours were being computed. Later that same day, both had been interrogated by Wood concerning the substance of those statements. When they reported for work on the following Monday, August 27, they were told that there was no work available.[21] A similar message was conveyed to them on the following day. As a result of intervention by Union Representative Kelly, according to Wood, they were dispatched on Wednesday, August 29. They were able to work only 4 hours that day and had to cease work because the project had not been cleaned up and, accordingly, had not been in safe condition for the insulators' scaffold. Later that day, they told Wood and Thompson that Kelly had gotten them jobs as framers and, consequently, that they would no longer be working for Respondent. It is uncontroverted that after they had left, Thompson, the official who fills out the daily work schedules, had gotten up, smiled and said "All right. That is what we wanted them to do."

A preponderance of the evidence supports the conclusion that, like Webb, Mills and Mergen had been constructively discharged by Respondent. First, it is clear that Respondent had ceased assigning them work with the object of compelling them to quit. Wood claimed that they had not been dispatched to any project because there had been a "lack of work" and because Respondent had chosen to use only journeymen that week. Yet, this explanation is contradicted by Thompson's admission that Respondent had wanted Mills and Mergen to quit. Moreover, Wood was not a credible witness and, as found above, his explanations with regard to the departures of Beck and Webb were vague, largely unsupported by documentary evidence, and inconsistent with other evidence presented. In this area, there is no evidence that Respondent had followed a practice of selecting only journeymen, in preference to apprentices, whenever there had been shortages of work. Mills and Mergen had worked steadily through the summer. There is no evidence that Respondent's situation with respect to projects had been any different during the week commencing August 27 than had been the case during the immediately preceding weeks when those two employees had been dispatched to projects regularly. In these circumstances, the evidence does support the conclusion that Respondent had ceased assigning work to Mills and Mergen to force them to abandon further employment with Respondent.

Second, it is equally clear that the motive for Respondent's desire that Mills and Mergen quit had been because of their apparent support for the Union's opposition to Respondent's unlawful changes in the terms of the collective-bargaining agreement. No other possible motive for wanting them to quit is disclosed by the record. On the Friday preceding cessation of work assignments to them, Mills and Mergen had disclosed to Respondent that they had given written statements to the

[21] There is no dispute that, during this week, Mergen and Mills each had worked 4 hours at Raznick's project, performing preliminary work. The two employees placed this work as having occurred on Monday, August 27. However, their workcards, attached to the post-hearing stipulation, support Wood's account that they actually had worked there on Wednesday, August 29.

Union regarding the method then being followed by Respondent to compute working hours. The fact that they had chosen to prepare these statements is evidence of their support for the Union's position. For, it is unlikely that they would have chosen to aid the Union by giving such statements if they had not been, at least, sympathetic to the Union's position and, concomitantly, not in favor of Respondent's changes. As found above, Respondent had directed unfair labor practices against other employees who had communicated with the Union and who had favored its position in the dispute with Respondent. Two of these employees had been unlawfully terminated. The termination of Webb had been accomplished in a manner that paralleled that followed with regard to Mills and Mergen: once dissatisfaction with the changes had been discerned by Respondent, cessation of work assignments for "lack of work" had followed. In these circumstances, the conclusion is warranted that Respondent's desire that Mills and Mergen quit had been occasioned by their protected activity of supporting the Union's opposition to Respondent's unlawful changes in the terms of its collective-bargaining agreement.

Third, the evidence shows that it had been Respondent's unfair labor practices that had led these two employees to quit. While they had considered the work that they had been performing to have been something less than ideal, both employees had worked for Respondent for significant periods of time without having made any effort to obtain employment elsewhere. At the time that they had given the statements to the Union on August 24, they had been warned that they might be subjected to reprisals and had been promised assistance in obtaining employment elsewhere should that occur. As Mills testified, with respect to his employment by Respondent, "I was trying to learn a trade. I didn't want to leave the trade I was in because I had already paid hundreds of dollars into the union and I just didn't feel I should let it go up in smoke." Although Mergen testified that he had not liked working for Respondent, he also identified the piecerate method of computing work hours as having been the cause of his dissatisfaction: "I had to psyche myself up in the morning just to go to work because I knew I had to put down so much square feet to get an eight-hour day and it is hard when you are married." Therefore, I find that a preponderance of the evidence establishes that neither Mills nor Mergen would have quit had it not been for Respondent's unlawful changes in their method of computing work hours and its refusal to assign them work because of their apparent support for the Union's objections to Respondent's failure to observe the terms of its collective-bargaining agreement.[22] Inasmuch as such conduct by an employer "diminishes the union's capacity effectively to represent the employees in the bargaining unit," *Haberman Construction, supra*, 618 F.2d at 298, I find that these two employees quit because of the unlawfully intolerable conditions created by Respondent and, accordingly, that Mills and Mergen had been constructively discharged in violation of Section 8(a)(3) and (1) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Advanced Installations, Inc., set forth above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Advanced Installations, Inc., is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Ventura County District Council of Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union activities and sympathies, and by threatening reprisals against employees who did not acquiesce in unilateral changes in the collective-bargaining agreement and who participated in opposition to those changes, Advanced Installations, Inc., has violated Section 8(a)(1) of the Act.

4. By suspending for 1 day and by discharging Eric James Beck, and by constructively discharging Donald H. Webb, David Mills, and Patrick Allison Mergen, for refusing to acquiesce in unilateral changes in the terms of the collective-bargaining agreement and for participating in opposing those changes, Advanced Installations, Inc., violated Section 8(a)(3) and (1) of the Act.

5. The unit appropriate for collective bargaining is:

> All employees employed by employer-members of The Building Industry Association of California, Inc., including Advanced Installations, Inc., in the classifications carpenter, shingler, hardwood floor worker, millwright, saw filer, table power saw operator, pneumatic nailer or power stapler, wood fence builder on residential projects, roof loader of shingles, pile driver foreman, bridge or dock carpenter and cable splicer, pile driver man-derrick bargeman, head rockslinger, rockslinger, rock bargeman or scowman, cabinet installer and acoustical installer, excluding office clerical employees, guards and supervisors as defined by the Act.

6. At all times material, Ventura County District Council of Carpenters has been the exclusive collective-

[22] While Mills and Mergen were dispatched to Raznick on August 29, their assignment there had resulted from the Union's intervention on their behalf and not as a result of any independent change in Respondent's intention to force them to quit. Thus, it cannot be presumed that Respondent would have resumed assigning them work on succeeding days absent further efforts by the Union. That, of course, would have meant that the two employees would have had to seek the Union's assistance on every succeeding morning to be dispatched. Further, to be able to effectively assist them, the Union would have had to locate work for them to do on each of these occasions, as it had done on August 29, in order to be able to persuade Respondent to dispatch them. In this regard, the fact that the Raznick project had not been ready for insulation installation on August 29 is not dispositive of the availability of work for Mills and Mergen. For, Respondent concedes that other projects were in progress and the issue here is Respondent's refusal to assign the two employees to work on one of them.

bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act.

7. By bargaining directly with employees in the unit described in Conclusion of Law 5, above, and by changing and modifying the terms and conditions of its collective-bargaining agreement with Ventura County District Council of Carpenters, covering employees in that unit, without obtaining that labor organization's consent to those changes and modifications, at a time when that agreement could not be reopened, Advanced Installations, Inc., has violated Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Advanced Installations, Inc., has not violated the Act in any manner other than as specified above.

THE REMEDY

Having found that Advanced Installations, Inc., has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and that certain affirmative action be taken by it to effectuate the policies of the Act. With regard to the latter, I shall recommend that Advanced Installations, Inc., be ordered to restore the wages, hours, and terms and conditions of employment to the levels required by its collective-bargaining agreement with Ventura County District Council of Carpenters, and to make whole its employees for any losses suffered as a result of its unlawful changes in the method of computing working hours since November 1, 1978, with interest on the amounts owing to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977); see also *Olympic Medical Corporation*, 250 NLRB 146 (1980). In this respect, Advanced Installations, Inc., will be required to make whole its employees by transmitting to the trust funds specified in the collective-bargaining agreement amounts which would have been contributed had there been no unlawful changes in the contractual method of computing the number of hours worked. See, *Merryweather Optical Company*, 240 NLRB 1213, 1215 (1979). Advanced Installations, Inc., will also be required to offer Eric James Beck, Donald H. Webb, David Mills, and Patrick Allison Mergen immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, anyone who may have been hired or assigned to perform the work that they had been performing prior to their terminations. Additionally, Advanced Installations, Inc., will be required to make whole Beck, Webb, Mills, and Mergen for any loss of earnings they may have suffered by reason of their unlawful terminations and for any loss of earnings that Beck may have suffered by reason of his unlawful 1-day suspension, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest in the manner prescribed in *Florida Steel Corporation, supra*; see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), enforcement denied on different grounds 322 F.2d 913 (9th Cir. 1963).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The Respondent, Advanced Installations, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees regarding their union activities and sympathies, and threatening employees with reprisals if they do not acquiesce in unlawful changes in contractual terms and cease participating in opposition to those changes.

(b) Suspending, discharging, or otherwise discriminating against employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

(c) Changing and refusing to apply terms and conditions of collective-bargaining agreements with Ventura County District Council of Carpenters to employees in the appropriate unit set forth in Conclusion of Law 5, above, absent express written consent of that labor organization.

(d) Bargaining directly with employees in the bargaining unit heretofore found appropriate in Conclusion of Law 5, above.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of any right guaranteed them by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Ventura County District Council of Carpenters, as the exclusive bargaining representative of all employees employed in the bargaining unit heretofore found appropriate in Conclusion of Law 5, above, respecting rates of pay, wages, hours, or other terms and conditions of employment and, should any understandings be reached, embody such understandings in a signed agreement.

(b) Reinstate and observe contractual terms and conditions with respect to employees in the bargaining unit heretofore found appropriate in Conclusion of Law No. 5, above, and make whole those employees for any losses in wages and benefits that would have accrued to them but for the unlawful changes and modifications in contractual terms, in the manner set forth above in the section of this Decision entitled "The Remedy."

(c) Offer Eric James Beck, Donald H. Webb, David Mills, and Patrick Allison Mergen immediate and full reinstatement to their former positions of employment, dismissing, if necessary, anyone who may have been hired

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

or assigned to perform the work that they had been performing prior to their unlawful terminations or, if any of their former positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of the discrimination practiced against them, in the manner set forth above in the section entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Ventura, California, facility copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Advanced Installations, Inc., to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed with respect to the allegations that Respondent suspended Frank Pagano for 1 day and solicited an employee to engage in surveillance of other employees' protected activity.

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."